



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 7371-99
23 March 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Naval Reserve for eight years on 27 June 1989 at age 18. On the same date, you were ordered to active duty for a period of three years in the Active Mariner Program. The record reflects that prior to your enlistment, you were briefed on the Navy's policy regarding drug and alcohol abuse and the consequences of illicit drug use. You completed recruit training and were assigned to the fleet.

The record further reflects that you served without incident until 6 April 1990 when you received nonjudicial punishment (NJP) for the use of marijuana and failure to obey a lawful order. Punishment imposed consisted of forfeitures of \$360 per month for two months and 60 days of restriction. On the same day, you were formally counseled regarding the wrongful use of marijuana while on liberty and warned that failure to take corrective action could result in administrative separation under other than honorable conditions.

On 1 November 1991 you received a second NJP for use of marijuana. Punishment imposed consisted of forfeitures of \$376 per month for two months, reduction in rate to SR (E-1), and 30 days of restriction and extra duty.

On 8 November 1991 you were notified that discharge under other than honorable conditions was being considered by reason of misconduct due drug abuse and commission of a serious offense. You were advised of your rights, declined to consult with counsel, and waived the right to present your case to an administrative discharge board (ADB). You were evaluated by a medical officer on 14 November 1991 and found to be physically and psychologically dependent on marijuana.

On 5 December 1991 the commanding officer (CO) recommended discharge under other than honorable conditions by reason of misconduct due to drug abuse and commission of a serious offense. In his recommendation, the CO stated that your most recent incident of drug abuse was just another indication of your inability to comprehend the seriousness of your misconduct. You displayed a lackadaisical attitude regarding the use of illegal drugs and were not amenable to counseling and rehabilitation. The CO opined that you had no potential for further service.

On 18 December 1992, the Chief of Naval Personnel directed discharge under other than honorable conditions by reason of misconduct due to drug abuse. Incident to your separation, you declined an offer of inpatient drug rehabilitation treatment via a Veterans Administration treatment facility prior to discharge. You were discharged under other than honorable condition on 24 December 1991.

The Naval Discharge Review Board denied your request for an upgrade of your discharge on 12 February 1993.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, regret for your actions, and the fact that it has been more than eight years since you were discharged. The Board noted your contention that you had some sort of illness during your enlistment which was never diagnosed. However, you provide no evidence to support your contention. Your separation physical examination contained no evidence of a disqualifying condition for which disability processing was required. The Board concluded that the foregoing factors and contention were insufficient to warrant recharacterization given your record of two NJPs for use of marijuana. Your second NJP demonstrated a willful disregard for Navy discipline and its zero tolerance policy on the use of illegal drugs. The Board noted the aggravating factor that you waived your right to an ADB, the one

opportunity you had to show why you should be retained or discharged under honorable conditions. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director